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No. ~~05-799~~  
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In The  
**Supreme Court of the United States**

Michael H. Visin  
Natalie Marselly *Petitioners*

v.

Commissioner of Internal Revenue Service  
*Respondent*

On Petition For Writ Of Certiorari  
To The United States Court Of Appeals  
For The 9<sup>th</sup> Circuit

**PETITION FOR WRIT OF CERTIORARI**

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## **QUESTIONS PRESENTED IN THE CASE FOR THE COURT.**

### **Introduction to the questions:**

The questions on Pages (i) and (ii), are related to two separate issues in this Income Tax Case. Issue No.1 relates to adopted by Lower Courts definite misconceptions that, IRC. Sec.280A can limit deduction of the Net Business Loss occurred on account of Ordinary and Necessary Business Expenses. Issue No.2 relates to allowance to Small businessmen deductions of certain Capital Expenditures within the year of the business, under URC. Sec.179. On both issues Petitioner disagrees with Lower Courts decisions, and in Issue No.1 Pr. also raises questions of whether certain Constitutional Guarantees and protections were denied to Petitioner during judicial proceedings in this case.

### **Questions related to issue No.1:**

1. Since Net Business Loss, occurred strictly on account of Ordinary and Necessary Business Expenses, is deductible to any business in America in the current business year, under Internal Revenue Code Sec.162, Treasury Regulations 1.162-1, and 1.280A-1,2, - can Respondent deny such deduction under Internal Revenue Code Sec.280A, even, if the last legislative Amendment of Sec.280A, enacted in year 1985, explicitly allows such deduction?

2. Can lower Federal Courts, deny to Petitioner Equal Constitutional Protection under certain active laws, governmental regulations, and Legislative Rulings (*such as listed in Question No.1*), directly related to his case, and rendering strong support to Petitioner's position, - by completely disregarding, and ignoring these laws and regulations, and declaring legal evidence precisely quoted from them - meritless, without any judicial response to them?

3. Can Lower Federal Courts, deny to Petitioner any chance for Legal Dialog with Court and Respondent, by denying To Petitioner Oral Hearing process, and at the same time not producing whether in Oral Hearing or in writing, - any fair and objective evaluation on the legal merit of these Legal Facts and Evidence, which Petitioner presented to Courts, exactly as they are present in the Laws, mentioned in Question No.1, which extend to Petitioner Constitutional protection from possible unjust actions by

Respondent; and isn't such actions of Lower Federal Courts seriously undermine, if not completely nullify, granted to Petitioner by Constitution, Equal Access to a Due Process under the Law?

**Question related to Issue No.2**

Should Lower Federal Courts, adopt a rigid approach, and deny to taxpayer, allowed by Legislature deduction of Capital Expenditures, within the year of the business, if taxpayer inserted such deduction in the Schedule "C", clearly demonstrating the choice to deduct such expenses, but wasn't aware of necessity to attach a special form for such deduction, and was not notified by IRS that, his Tax Return isn't complete, to give taxpayer a guaranteed by the Treasury chance, within the time allowed, to supply such form, or file an amended Tax return?

## **Conventions and Abbreviations adopted In This Petition**

### **Conventions:**

1. For the reason to emphasize the difference between two different categories of taxpayers, who conduct business on the part of their residence, we will use expression "businessmen-homeowners" for those businessmen, who own their homes. Otherwise, we will use expression "businessmen-renters", for those who don't.

**Abbreviations:** /Following will be used in the text of Petition/:

1. Bus. Exp. - will always stand for - **Business Expenses.**
2. BRPs. - will always stand for - **Business Rental Payments.**
3. Pr. - will always stand for - **Petitioner.**
4. R. - will always stand for - **Respondent.**
5. Hmr. - will always stand for - **Homeowner.**
6. Rr. - will always stand for - **Renter.**
7. Pr.'s - will always stand for - **Petitioner's.**
8. R.'s - will always stand for - **Respondent's.**
9. Hmr.'s - will always stand for - **Homeowner's**
10. Hmrs. - will always stand for - **Homeowners.**
- 11. Tr. Reg. - will always stand for - **Treasury Regulations.**
12. IRC. - will always stand for - **Internal revenue Code.**
13. D.U. - will always stand for - **Dwelling Unit.**
14. T.C. - will always stand for - **Tax Court.**

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**List of the Legal Authorities:**

1. Internal Revenue Code Section 280A
2. Treasury Regulations 1.280A-1, 2
3. Internal Revenue Code Section 162.
4. Treasury Regulation 1.162-1
5. Legislative Committee of the House  
Opinion on Sec.280A Amendment:  
[ House Report 99-426, pages 133 – 135  
(1985), 1986 – 3 C.B. (Vol. 2) pages 133 – 135.]
6. IRC. Sec.179
7. The Constitution of the United States  
/ Amendment V / - Due Process
8. The Constitution of the United States  
/ Amendment XIV / - Due Process,  
Equal Protection of The Law
9. The Declaration of Independence

**1. Jurisdiction:** Petitioners Residence and Business are located in San Francisco, Ca. 94121; which is within the Jurisdiction of United States Court Of Appeals For The 9<sup>th</sup> Circuit. Also This Petition is filed under 28 USC Section 1254, subpart 1.

**2. Timeliness of Appeal of Petition:**

- a). On June 18, 2003 Tax Court trial before S.T. Judge Robert Armen took place, where Petitioner submitted to Court its Trial Arguments in writing.
- b). On August 18, 2003 Tax Court filed and served Memorandum Finding Of Facts And Opinion.
- c). On October 28, 2003, Tax Court issued Order denying Petitioners' Motion for Reconsideration.
- d). On December 8, 2003, Tax Court entered Decision in the case

in favor of Respondent.

**e).** On Jan.14, 2004 Tax Court issued Order of denial of Petitioners' Motion to Vacate the Tax Court's Decision.

**f).** On March 11, 2004, Notice of Appeal in United States Court Of Appeals for he 9<sup>th</sup> Circuit was mailed by Petitioners.

**g).** On February 11, 2005, Decision of The Court of Appeals, by the three judges panel of Fernandez, Graber, and Gould, affirmed decision of the Tax Court.

**h).** On March 31, 2005, Petitioners submitted to Court of Appeals their Petition For rehearing En Banc.

**i).** On August 2, 2005, Court of Appeals for The 9<sup>th</sup> Circuit issued Order, denying Petitioners' Petition For rehearing En Banc.

**j).** On October 21, 2005, Supreme Court of the United States granted petitioners extension of time to present Petition for the Writ Of Certiorari on the November 30, 2005, including.

**3.** This Petition and Appendix were prepared in compliance with Supreme Court of the United States Rules 14, and 33.

#### **4. Special Note:**

All underscored words and expressions, and bold type, - is by Petitioner only, by necessity to emphasize, or to make stand out certain contentions, and parts of the quotations from the Tax Laws, and from Treasury Regulations and similar, which never have been paid particular attention to, - in previous similar cases



## **Issue No.1      Proper Application of Sec. 280A.**

### **Introduction**

Considering that U.S. Tax Laws have widest national application, this case by itself has wide national significance, because it dispels long standing misconception, adopted by Respondent, Tax Court, and Courts of Appeals that, IRC. Section 280A is authorized to limit deduction of Ordinary and Necessary Bus. Exp., while in reality, it was enacted only for regulating deductions of typical Hmr.'s Exp., allowed by Congress to Hmrs., who use part of their homes for business; for which abundance of proof from the relative Tax Laws is presented here. IRC. Sec.162, Tr. Reg. 1.280-1,2 and 1.162-1, intimately related to, but never in depth, or at all considered by R. and Lower Courts in similar cases, are so overpoweringly on Pr.'s side that, Pr. could be, possibly, able to prove his cause with single quote from the last Legislative Amendment of Sec.280A (*part "C", Page 12 of this Petition*), which stands in complete agreement with over mentioned laws. This quote proves that, all Ordinary and Necessary Bus. Exp., can, and have to be deducted from the gross income of the business, (with permitted Net Loss), - well in advance of all other deductions, regulated by Sec.280A; - an irrefutable evidence of limited purpose, for which Sec.280A was created and amended. But since misconception, in regard to Sec.280A legal powers, became the adopted practice in similar cases, Pr. presents to Court, methodical and completely unbiased, step by step analyzes of all relative to this case tax laws. Still, additional aspects of this Issue, indicated in the questions; are related to such Constitutional guarantees, as: Equal Access To The Due Process under the Law, Equal Protection Under The Law, and, as consequence of possible violation of these guarantees, - Business Discrimination, Discrimination from the Equal Chance in Pursuit Of Happiness, etc.

### **Basic Facts Of The Case – Issue No.1**

Pr., who runs his Fine Art Business on the bulk of the flat, rented by its size, prevailingly, as the place for business, and a smaller percentage of it, as a residence, - sustained a Net Loss in his business in years 1997 and 1998; due to serious illness, that could be well cured with immediate treatment, but misdiagnosed, and not treated for 19 days, lead to five hospitalizations through years in issue; and a lot of pain and suffering, which cut in Pr. work schedule, and slowed the process of completion of Pr.'s numerous art works, executed in multi-layered oil painting technique, demanding a lot of time for

precise modeling of details within complex and tightly packed compositions. For his art business, Pr. uses three front rooms, all separated by the doors. Pr. is using stairs and entrance hall for displaying his art works, sales of picture framing, and his ceramic pieces, and also for framing his paintings, meeting patrons, and arranging receptions. Prs. are using second largest room in the apartment, as combination living room and bedroom, which with spacious kitchen forms satisfactory studio apartment, with separate entrance. In 1998, Pr. also used his garage space for business only; for cutting moldings and producing ceramics, fired elsewhere. In his Tax Returns, for the years in issue, Pr. claimed deductions of his Ordinary and Necessary Bus. Exp., including Business Rental Payments, for the percentage of apartment used for business, on the basis of: IRC. Sec.162, entitled "Trade and Business Expenses", and Tr. Reg. 1.162-1, enacted as this section's legal extension. R. audited these tax returns and disallowed part of deductions of Pr.'s BRPs., which were the reason for the Net Loss, basing disallowance on IRC. Sec.280A. Pr. filed two Appeals with R., presenting proof from Sec.280A and Tr. Reg. 1.280A-1,2 that, Sec.280A is not authorized to rule over BRPs., such as Pr.'s, but only over, so called, Home Office Deductions, which List, located in Tr. Reg. 1.280A-1,2, includes only typical Hmrs.'s Exp., such as: Home Insurance, Home Depreciations, and similar, all related to security and maintenance of the Equity of the owned home. In response, R., on its own, initiated, so called Technical Advice Process in its National IRS Office, which lasted almost three years, and was finally abandoned by R., without any responses being produced to Pr.'s Legal Arguments, all - strictly based on the relative to the case Tax Laws and Tr. Reg. In its statement of denial, R. flatly refused to enter in detailed Legal Dialog with Pr.; and stated that, the absence of any references to Renters and their Rental Payments in Sec.280A and its Tr. Reg., does not preclude partial disallowance of BRPs., like Pr.'s on the basis of Sec.280A. Pr. filed an appeal with Tax Court, that ruled for R., and so did the Court of Appeals for The 9<sup>th</sup> Circuit. Not a single Pr.'s legal argument, precisely based on relative to the case Tax Laws, listed above; and on the text of the last Legislative Amendment of Sec.280A, - was evaluated on its legal merit, or answered by either Courts, and no any Oral Hearings were allowed to Pr., which truly makes Supreme Court of The United States - the Court of Last Resort, and not only for this Pr., but equally so - for



many other possible petitioners, all of which still can be facing financial liability, which is explicitly not authorized by Legislature.

### **Short Foreword to Petitioners' Legal Arguments on Issue No.1**

The same legal contentions, presented here, were presented to Lower Courts, such as: **a).** detailed legal analyzes of Sec.280A and Sec.162, Tr. Reg. 1.280A-1.2 and 1.162-1. In addition, Pr. also presented: **b).** Detailed legal analyzes of Opinion and Instructions from the last Legislative amendment of Sec.280A, on precise meaning and ways Sec.280A should be applied. **c).** Examination of Legal Realities of the IRC., defining ways of possible legal interaction between different sections of the Code, and limited authority over other sections by Sections 161 and 261. **d).** Continuity of power of Congressional authority in eventual formulations of individual sections, treasury regulations, and formation of legal systematic of IRC. itself. It is important to note that, arguments **b, c,** and **d,** constituted completely new and additional arguments, initially presented to the Tax Court, in direct response to the Tax Court Opinion. The same set, of all over listed arguments, was included, even in more detailed form, in Pr.'s Petition For Rehearing En Banc.

For the convenience and necessity to analyze each different aspect of this issue, Pr.'s legal contentions are presented to Court in several relative parts: "A", "B", "C", "D", "E", "F", "G", - inevitably interconnected with each other, which makes each separate part equally and uniquely important for the whole picture.

### **Part A. - Why Petitioner claimed deduction of his BRPs. under IRC. Sec.162, as the only legal authority in IRC. over Pr.'s Business Rental deductions ?**

1. Because Pr.'s BRPs. belong to Ordinary and Necessary Bus. Exp., incurred due to income producing activity, to which even Tax Court didn't object (*see farther evidence of this in Tax Court Opinion, A-1 in Appendix*). Pr. claimed deduction of his BRPs. under IRC. Sec.162, entitled "Trade and Business Expenses", on the basis of its Ruling Paragraph **(a)(3)**, which states following: (*we quote*)

"In general. - There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during taxable year in carrying on any trade or business, **including - rentals** or other payments required to be made as a condition to the **continued use or possession**, for purposes of the trade or business, of property to which taxpayer has not taken or is not taking title, or in which he has no equity."

2. Pr. Also relied on Tr. Reg. 1.162-1, entitled "Bus. Exp.", - enacted by the Treasury, as Legal Extension of Sec.162, which affirms that: "...the full amount of the allowable deduction for ordinary and necessary expenses in carrying on a business is deductible, even though such expenses exceed the gross income derived during the taxable year from such business"

3. These quotes, should have left no doubts that, Pr. has its undeniable right to deduct his BRPs. in full, during taxable year of business, under Sec.162 and its Tr. Reg.; but such conclusion deserves additional commentaries, due to the following later comparative evaluation of Sec.162 and Sec.280A. **First: Sec.162** contains, as any fully potent law must, - clear and unambiguous definition of Ordinary and Necessary Bus. Exp., along with precise definition of Bus. Rental Exp., as their legitimate part; and it presents calm and authoritative ruling of how ordinary Bus. Exp. can be deducted. **Second:** It sets up an important deductibility conditions for the Business Rental Payments, such as: necessity for continued access to the property without which business is simply impossible to conduct, as it precisely is in Petitioner's circumstances; and absence of any equity on businessman part, in the rented property. Conditions that Pr.'s Bus. Rental Deductions satisfy fully. It has to be added that, there is absolutely nothing in the whole of IRC. that contradicts this important for business - ruling of Sec.162.

4. Also, the absence of equity in the part of property, rented by Pr. exclusively for business, has additional special importance, because it reflects main principle of American taxation laws; meaning that, when taxpayer spends part of his income to buy something for personal use, such expense is prevailingly not deductible, because in exchange for it taxpayer acquires something of equal value, compensating him for expense. The business expense, is an expense toward the process of creation of any kind of product, or providing service - not for the businessman, but for the potential customer; and as such - is an expense toward the income or profit creating activity, that contains element of risk of net loss. This is why that, it is the net profit only that is taxed, but not the loss, which can happen even to a mighty corporation, with all seemingly needed means to avoid it. But this is exactly what R. is trying to do - to tax Pr.'s business loss.

5. But there is still a question in regard to Sec.162. Is there an exception from the general rule 162(a)(3)? And the answer lays in the way that IRC. code is structured. So, if there are any such

exceptions, all of them are specified in Sec.162 itself, or in many Cross-References between Sec.162 and other IRC. sections; but what is important for Pr.'s case: Sec.162 has absolutely no cross-references with Sec.280A.

6. And in the end, one more question can be asked. Does ruling of Sec.162 on deductibility of Ordinary and Necessary Bus. Exp., coming from Legislative branch of the government; and the ruling on the same in Tr. Reg. 1.162-1, coming from Executive branch's Secretary of the Treasury, to whom Respondent himself reports, represent the End Legislative Result, or the Final Will of The Congress, in regard to deduction of such expenses? In Pr.'s opinion, the answer to such question should be obvious - yes, because Tr. Reg. for the specific IRC. section is always enacted by the Treasury with explicit permission and authorization from the US. Congress, and with exhaustive knowledge of the IRC.

#### **Part B. - IRC Section 280A and its legal authority.**

1. The title of Sec.280A is: **"Disallowance of certain expenses in connection with business use of home, rental of vacation homes, etc."** And it should be fair assumption that this title sets up the scope of Sec.280A legal authority, so it makes sense to try to analyze what this title means.

2. Presuming that word "disallowance" means possible limits on deductibility of these "certain expenses"; the first we can notice, is that, this title is not using the term "business expenses", but instead speaks about "certain expenses in connection with business use of home", which possibly constitute some specific group of expenses, unknown to us so far, and entirely different from Ordinary Bus. Exp. which, as we know from Sec.162, are fully deductible.

3. After the title of Sec.280A, we encounter subsection (a) General rule: *(quote)*

"except as otherwise provided in this section, in case of a taxpayer who is an individual or an S corporation, no deductions otherwise allowable under this chapter shall be allowed with respect of the use of the dwelling unit which is used by the taxpayer during the taxable year as a residence". R. customary trying to use this subsection, as the mean to place limit of deductibility not only on so called "certain expenses", which we eventually will precisely define, but on Ordinary and Necessary Bus. Exp. also, - in total contradiction with Sec.162, Tr. Reg.1.162-1, and Tr. Reg. 1.280-1.2; and this is why, we have to point to certain paradoxes and

ambiguities that this subsection (a) contains. Sec.280A, as a law, is suppose to give us the list of expenses it is created to rule over, because these are the only expenses “allowable under this chapter” to be deducted, when part of the residence is used by taxpayer for business. But the promise of General Rule (a) - **the list of expenses or deductions**, uniquely “allowable under this chapter”, - is **totally absent** in Sec.280A; and without such List and precise order of these deductions, - **Sec.280A simply can not be used alone!** But instead of specific “certain expenses” or specific deductions, the whole of the Sec. 280A discusses variety of specific circumstances, in which part of the home can be used for business, and all of them, without exceptions, - are related to businessmen-homeowners; and as R. admitted himself, in the written statement to Pr., there are no any references in Sec.280A to businessmen-renters or their BRPs.

4. We next quote subsection 280A(b): “Exceptions for interest, taxes, casualty losses, etc. – Subsection (a) shall not apply to any deductions allowable to the taxpayer without regard to its connection with his trade or business (or with his income producing activity).” These expenses-deductions are the **only one**, specifically defined in Sec.280A, and they point to the possible fact that taxpayer in Sec.280A is – Homeowner!

5. Farther exceptions, listed in subsection 280A(c), do not define any additional, allowable under general rule 280A(a) deductible expenses; but instead define only the circumstances in which these “certain expenses” can be deducted. But what is important for us is following: **First** - The only expenses which are specifically identified in subsection 280A(b), are expenses of Hmrs. **Second** – When we look at paragraph 280A(c)(5), “Limitation on deductions”, which prevailingly is written as one sentence, and obviously for the “deductions allowable under this chapter”, we inevitably witness that the first operation, which should be done to define the possible remainder of the “excess of gross income” available for farther deductions, is deductions from it - expenses specified in subsection 280A(b), - specifically Hmrs’ Exp. This, along with fact that Sec.280A speaks only about Businessmen-Hmrs., supplies additional possible proof that Sec.280A regulates only specific Hmrs.’s deductions, as a special category.

6. The paragraph (C)(5) of Sec.280A, again, is prevailingly a long single sentence. Its language is very condense and in places confusing, especially because even here, in the most important